United Nations S/AC.56/2015/6

Security Council

Distr.: General
13 May 2015

Original: English

Security Council Committee established pursuant to resolution 2140 (2014)

Note verbale dated 11 May 2015 from the Permanent Mission of Australia to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 2140 (2014) and has the honour to submit the report of Australia prepared pursuant to paragraph 9 of resolution 2204 (2015) (see annex).

15-07539 (E) 190515

Please recycle

Annex to the note verbale dated 11 May 2015 from the Permanent Mission of Australia to the United Nations addressed to the Chair of the Committee

Report of Australia on the implementation of resolution 2204 (2015)

1. The Security Council, in paragraph 9 of its resolution 2204 (2015), called upon all Member States to report to the Committee within 90 days of the adoption of that resolution on the steps they have taken with a view to implementing the measures imposed by paragraph 11, on the assets freeze, and paragraph 15, on the travel ban, of resolution 2140 (2014).

2. The present report describes the steps taken by Australia to implement the measures set out in paragraphs 11 and 15 of resolution 2140 (2014).

Measures given effect under the Charter of the United Nations Act 1945

3. Paragraphs 11 and 15 of resolution 2140 (2014) are implemented in Australia primarily through the Charter of the United Nations (Sanctions — Yemen) Regulation 2014, which commenced on 17 May 2014. The Regulation was made pursuant to subsection 6 (1) of the Charter of the United Nations Act 1945 and, as such:

- In accordance with section 9 of the Act, the regulations have effect despite: an act enacted before the commencement of the regulations; or a law of a State or Territory; or an instrument made under such a law; or any provision of the Corporations Act 2001, or the Australian Securities and Investments Commission Act 2001, or of regulations made under those Acts; or an instrument made under such a provision;
- In accordance with subsection 10 (1) of the Act, no act enacted at or after the commencement of section 10 of the Act may be interpreted as amending or repealing, or otherwise altering the effect or operation of, a provision of the regulations; or as authorizing the making of an instrument amending or repealing, or otherwise altering the effect or operation of, a provision of the regulations.

Implementation of the assets freeze

4. Paragraph 11 of resolution 2140 (2014) requires all Member States, for a period of one year from the date of the adoption of the resolution:

- To freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the designated individuals or entities, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them;
- To ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the designated individuals or entities.

Resolution 2204 (2015) renewed the measures imposed by paragraph 11 of resolution 2140 (2014) until 26 February 2016.

5. The Charter of the United Nations (Sanctions — Yemen) Regulation 2014 implements the assets freeze established pursuant to paragraph 11 of resolution 2140 (2014) by:

- Prohibiting a person from directly or indirectly making an asset available to, or for the benefit of, a "designated person or entity" (section 5);
- Prohibiting a person who holds a "controlled asset" from using or dealing with the asset, allowing the asset to be used or dealt with, or facilitating the use of, or the dealing with, the asset (section 6).

6. The Regulation defines a "designated person or entity" as a person or entity designated by the Committee to be subject to the measures imposed in paragraph 11 of resolution 2140 (2014) (section 4).

7. The Regulation defines a "controlled asset" as an asset of a designated person or entity or funds derived from an asset owned or controlled, directly or indirectly, by a designated person or entity or a person acting on behalf of, or at the direction of, a designated person or entity (section 4).

8. The Regulation thereby prohibits the matters covered by paragraph 11 of resolution 2140 (2014).

9. The Regulation provides for the Minister for Foreign Affairs to issue a permit authorizing the making available of an asset to a designated person or entity or authorizing the use of, or dealing with, a controlled asset (section 7) to give effect to the exceptions to the targeted financial sanctions set out in paragraph 12 of resolution 2140 (2014).

10. Section 7 (2) limits the Minister's authority to issue permits authorizing the making available of an asset to a designated person or entity or authorizing the use of, or dealing with, a controlled asset to the circumstances mentioned in paragraphs 12 (a) to (c) of resolution 2140 (2014), namely where the funds, financial assets or economic resources are determined by the Minister to be:

(a) a "basic expense dealing"

(b) an "extraordinary expense dealing"

(c) a "legally required dealing", a "contractual dealing" or a "required payment dealing"

The terms "basic expense dealing", "extraordinary expense dealing", "legally required dealing", "contractual dealing" and "required payment dealing" are defined in regulation 5 of the Charter of the United Nations (Dealing with Assets) Regulations 2008 and correspond with paragraphs 12 (a) to (c) of resolution 2140 (2014).

Enforcement of the Charter of the United Nations (Sanctions — Yemen) Regulation 2014

11. Sections 5 and 6 of the Charter of the United Nations (Sanctions — Yemen) Regulation 2014 are declared as "United Nations sanction enforcement laws" under the Charter of the United Nations (United Nations Sanctions Enforcement Law) Declaration 2008, in accordance with subsection 2B of the Charter of the United

Nations Act 1945. Contravention of a United Nations sanction enforcement law, or of a condition of a permit granted under United Nations sanction enforcement law (where applicable), is an offence under section 27 of the Act.

12. Each United Nations sanction enforcement law is given the jurisdictional scope to correspond with the obligation it enforces. All apply to conduct when committed, or when a result of the conduct occurs, wholly or partly, in Australia or on-board an Australian aircraft or ship.

13. Sections 5 and 6 additionally apply (by reference in those sections to the application of section 15.1 of the Criminal Code 1995) to conduct when committed wholly outside Australia by an Australian citizen or an Australian body corporate.

14. Sections 5 and 6 also apply to conduct when committed by a person, whether or not in Australia and whether or not an Australian citizen, using the services of an Australian ship or aircraft (by reference in those sections to the application of section 15.1 of the Criminal Code 1995).

15. The current maximum penalty upon conviction for such an offence for individuals is 10 years' imprisonment or a fine, the greater of 425,000 Australian dollars or three times the value of the transaction. For a body corporate, the offence is one of strict liability unless it can prove that it took reasonable precautions and exercised due diligence to avoid contravening the regulation. The maximum penalty upon conviction for bodies corporate is a fine, the greater of 1.7 million dollars or three times the value of the transaction.

Measures given effect by other means

Implementation of the travel ban

16. Paragraph 15 of resolution 2140 (2014) requires all Member States, for a period of one year, to take the measures necessary to prevent the entry into or transit through their territories of individuals designated by the Committee. Resolution 2204 (2015) renews those measures until 26 February 2016.

17. Travel bans imposed on designated persons by Security Council resolutions are implemented in Australia by the Migration (United Nations Security Council Resolutions) Regulations 2007. The Migration Regulations provide that a person who is or becomes the subject of a resolution of the Security Council which requires Australia to prevent that person entering or transiting through Australian territory is unable to be granted a visa, or, if a visa has already been granted, to have his or her visa cancelled, consistent with the obligations in the relevant Council resolution.

18. The Department of Immigration and Border Protection maintains a Movement Alert List, which includes the names of non-citizens whose eligibility for a visa grant or continuing eligibility to hold a visa may be an issue. The names of all visa applicants are checked against the List prior to any decision to grant a visa to enter Australia. The List is electronically accessible to officers of the Department posted to Australia's diplomatic and consular missions worldwide, although the matching process is centralized in the Border Operations Centre in the National Office of the Department. Additional checks are also undertaken at Australian entry points to ensure that any person put on the List subsequent to their having been granted a visa is identified.